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NO. 86-1899

Supreme Court, U.S.
FILED
MAY 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

EARLENE POLYAK — APPELLANT

vs

THOMAS STACK AND
HENRY HENRY & STACK — APPELLEES

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

EARLENE POLYAK
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PUBLISHER'S NOTE:

Original Pagination is not continuous.

QUESTIONS PRESENTED

1. Dose the Court of Appeals affirming of the District Judge's denial of restraining order to protect property rights and interests of pro se litigant relying on Tennessee Statute pending jury trial to determine damages render statute invalid and repugnent to the Constitution?

2. Does lack of assistance when counsel relied on hearing instead of jury trial to determine non-resident pro se ligitants property rights merit New Trial in initial hearing on July 29, 1983?

3. Should jury trial be ordered to determine whether allegations of negilence and malfeasance on which District Judge allowedcomplaint filed to determine amount and extent of damages?

4. Is the enjoining of pro se litigant from further suits involving property constitutional?

5. Does pro se litigant merit due process supported by the Fifth and Fourteenth Amendments? And jury trial pursuant to Seventh Amendment?

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PARTIES TO THE PROCEEDINGS

Appellant-Plaintiff below is Earlene Polyak, No. 86-5199, arises out of District No. 1:85-0125.

Appellee-Defendant is Thomas Stack and Henry Henry & Stack.

Arises out of: Frank Hulen and Wilma Lesnansky v Earlene Polyak No. 84-6090(D.C.1:84-0082).

Companion cases: Earlene Polyak v Jim Hamilton No. 85-6134(D.C.1:85-0116)to which was joined by 28 U.S.C 1441(c) Buford Evans v Earlene Polyak No.85-6135(D.C.1:85-0120); Earlene Polyak v Thomas Stack Henry Henry & Stack No.1:85-0125; and Earlene Polyak v William Boston, Boston Bates & Holt No.3:85X-108 in District Court.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit, are set forth in Appendix A. The opinions of the United States District Court are set forth in Appendix B, and lower Court and companion cases are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit was entered on January 15, 1987, and the Petition for Rehearing En Banc was denied on March 3, 1987. The Court of Appeals took jurisdiction of this case and the Notice of Appeal was timely submitted on March 9, 1987. This appeal is being timely submitted within ninety days of March 3,1987.

The jurisdiction of this Court is invoked pursuant to Article III, Sec. 2, which states that the judicial power shall extend to all cases of law and equity, between a state and citizens of another state; between citizens of different states.

Appellant believes that it is also invoked under 42 U.S.C. Sec.1981, 1982, and 1983; U.S C.

1443(1&2); Equal Access to Justice 5 U.S.C 504: 60(b) FRCP, and the Fifth Seventh, Eight and Fourteenth Amendments.

The federal civil and constitutional questions were raised through out the proceeding leading to this appeal. This appeal is taken under 28 U.S.C 1254(2).

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

> No...person shall be deprived of life,liberty or property without due process of law; nor shall private property be taken for public use.

U.S. Const. amend. V, cl 3 & 4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of a jury trial shall be preserved....

U.S. Const. amen.VII.

The pertinent portion of the Eight Amendment is as follows:

> ... nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Const. amen. VIII .

The pertinent portion of the Fourteenth Amendment provides as follows:

No state shall make or enforce any law which shall abride the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws. U.S.Const. amend. XIV.

28 U.S.C. Civil actions... commenced in a State Court may be removed by defendant to a District Court.

(1) Against any person who is denied or cannot enforce the Courts of such State a right under any law providing for equal rights of citizens in the United States, or of all persons within the jurisdcition thereof.

(2) For any act under color of authority deprived from any law providing for equal rights....

42 U.S.C. Sec. 1981.

All persons within the jurisdiction of the United States shall have the same right in every state...equal benefit of all laws and proceedings for the security of persons and property....

42 U.S.C. Sec. 1982.

All citizens of the United States shall have the same right in every state... to inherit purchase, lease, sell and convey real and personal property.

42 U.S.C. Sec. 1983.

Every person who under the color of any statute, ordinance, regulation, custon or usuage of any state... subject or caused to be subjected any citizen of the United States or other person within its jurisdiction thereto the depriviation of rights and priveleges or immunities secured by the constitution and

laws, shall be liable to the party injured in the action in law in equity or other proper proceedings for the parties.

28 U.S.C. 2403.

In any action ... where the constitutionality of a statute of that state ffecting public interests drawn into question.

Tennessee Statute 29-27-117.

If... exact partition cannot be made... they may make the partitions as nearly equal and charge the larger shares with the sums necessary to equalize shares. Tennessee Code Annotated 1932.

Amendment Rule 5(a) Rules Appellate Procedure.

An amendment to Rule 5(a) of the Tennessee rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the Notice of Appeal be filed with the clerk of the appellate court.

STATEMENT OF THE CASE

Thomas Stack, Henry Henry & Stack were retained after contacting the Lawyer Referral Service in Nashville, Tennessee, to defend Appellant's right, interest and investment in property divided by settlement by agreement in 1976, in which she had restored and maintained the house on her agreed partion for a retirement home. She has a considerable investment in this house,which includes,but is not limited to a new roof $1200.00, telephone installation, electrical repair, termite control

insurance, painting and restoration of the interior and exterior of the entire building. Appellant relieved the first attorney when she suspected he was not protecting her best interest and that the property would sell at Public Auction. The Honorable Jim Hamilton denied thirty days to retain another attorney for trial scheduled July 15, 1983.

Mr. Thomas Stack, Henry Henry & Stack, agreed to defend Appellant's interest, agreement, and investment in her property, and cashed a check for $1500.00, which was enclosed with a statement, "It is my understanding that if we are not succesful in Lawrenceburg, we will appeal to a higher Court."She also needs crop rent from farm.

Appellant suffers many compliciations from open-heart surgery and is especially sensitive to extreme heat and cold. She notified Mr. Stack one week before the rescheduled trial for July 29, 1983, that she was already ill and should not be exposed to 102 degree heat wave, which a nationwide warning to heart patients was in effect. Mr. Stack alleged that Mr. William Boston Bates & Holt, who represented the family before dividing their loyalties since 1976, absolutely refused to reschedule trial.

Appellant became acutely ill upon arriving in Pulaski in the intense heat on July 28, 1983, Mr. Stack was unable to keep appointment for whole afternoon, but met her a few minute in Courthouse where he was conducting trial. This was the first time he informed her that Mr. Buford Evans had measured her farm that morning, later evolved into another trial in Circuit Court of Lawrence County, Tennessee.

On July 29, 1983, Appellant was taking Oxygen and again asked Mr. Stack to postphone trial until Monday to allow her to get better, but he instructed her and her husband, Alex Polyak to follow him and Mr. Evans to trial in Columbia, Maury County, Tennessee. The Honorable Jim Hamilton held hearing within two hours while the jury was out on another trial. and when Mr. Stack rose to give summary, Judge verbally ordered property sold. Appellant confronted Mr. Stack with an unfair and unjust trial and demanded a New Trial in his office on Monday, August 31,1983.

On August 22, 1983, Appellant went to Pulaski again to confront Mr. Stack about his disregard of letters and telephone calls about her case, and to check her property, and demanded a New Trial. The order prepared by Boston Bates & Holt awarded fees to

attorneys, but she was not awarded any monies for restoration repair and maintenance since 1976.She must pay one-third of cost of sale, and the entire cost of the case(App.C p. 23).

On October 19, 1983, Appellant learned counsel had broke his promise to refuse to sign order which did not award her any money, and signed order prepared by Boston Bates & Holt, she objected to Judge Hamilton at his office in Mt. Pleasant, Tennessee. When she learned signed order was finally entered with a few days left to appeal, Appellant again confronted Mr. Stack by telephone to appeal her case, After Mr. Stack learned that she had submitted Notice of Appeal, he promised to enter Motion for a New Trial and only submitted $1600.00 for New Roof etc.

On December 19, 1983, Appellant tried to give Mr. Stack more bills, which he disregarded, and she assumed case. When Mr. Stack returned papers, she learned that he did not enter, Memorandum Brief, evaluation of property by Mr. Evans, bills for restorarion of house, or a transcript of proceedings.

Appellant confronted Judge Hamilton with an unfair and unjust trial and she believes she raised the federal and constitution question of denial of

due process and the depriviation of civil and constitutional rights and laws. She argued for a New Trial based on(1)Wilma Lesnansky signed Complaint,but did not testify and withheld valuable eviednce about settlement by agreement in 1976;(2) Appellant was taken across County lines, against Tennessee law;(3) she was obligated to testify while acutely ill;(4) hearing was not given adequate time and consideration due to being held while the jury was out on another trial. Mr.Alex Polyak was present during division by drawing lines, but he was not called to testify. Mr. Stack had added Amendment or Reconsideration of order, and Appellant argued for her bills, which Judge Hamilton denied and ordered her to get appeal in wihtin ninety days, but Clerk submitted record and dismissed within twenty days in Court of Appeals.

Judge Hamilton instructed William Boston,Boston Bates & Holt to prepare judgment, which was signed by Charles Holt and Judge Hamilton on December 20, 1983, which Appellant learned unappealable(App. Cp 54; Thomas Stack Henry Henry & Stack entered order dismissal of counsel (App. C p. 54), which was signed by Thomas Stack, William Boston, and Judge Hamilton on January 10, 1984, which Court of Appeals alleged

appealable, and judgment prepared by Boston Bates& Holt unappeable and will review only after property sold. Order would force Appellant to pay all costs, without any consideration for agreement, investment, crop rent, right to property, which is irreparable damage and loss of a right to never be regained to her property(App.C p. 23).

On December 26, 1984, Thomas Stack testified against Appellant in suit filed by Mr. Buford Evans & Sons. She did not give Mr. Evans & Son permission to survey property and Mr. Evans is not licesned surveyor in Tennessee. Appellant's opinion invalid representation of property and correlation between map and order.Circuit Court Clerk demanded that Petitioner go to County Clerk and get a copy to additional forty(40) acres before he would allow appeal to Circuit Court.Judge Hamilton demanded that her husband also sign bond before appeal(App.C p.31).

Petitioner was acutely ill,had already gone to Florida at physician's recommendation when husband brought her in back of car on pillows 900 miles.She did not expect to go to trial until October session 1985, did not have time to get attorney, and was unprepared, and submitted Motion for Continuance.

Appellant again raised federal and constitutional question when she stated unfair and unjust to be subjected to trial when acutely ill, and supported with Eight Amendment. She objected to Mr. Stack's testifying against her. Judge Hamilton denied motion to him to Disqualify himself as she believed that he was prejudiced. Appellant believes Judge Hamilton prejudiced jury toward her and her husband and waited for judgment to be entered to Appeal to Court of Appeals (See Transcip App. C p.31 32 33 34 35 36).

After trial, she checked Nonsuit No. 10611, William Boston, Boston Bates & Holt and No. 10612, Thomas Stack Henry & Stack Circuit Court, and found what appeared to a dismissal of her objections to sale of property in Chancery Court signed by Judge Hamilton(App. C p.16 17).

When Judge Hamilton finally signed judgment on August 7, and Amended Judgment on August 22, 1985, she submitted timely Notice of Appeal. She received return of Notice of appeal stating Rule 5(a) amended to eliminate filing copy of Notice of Appeal with Court of Appeals, Judge Hamilton denied Motion to Forward Records to Court of Appeals on November 7, 1985. He disregarded all motions, but denied restraining

order against sale of property on September 18, 1985, Appellant believes amendment of Rule 5(a)(App.C 37)

After denial of Motion to Forward Records Appellant filed Complaint denial of due process and depriviation of civil and constitutional rights and laws against Jim Hamilton, in individual capacity as Circuit Judge, and the Circuit Court of Lawrence County No.1:85-0116. And joined under 28 U.S.C.1441(c) Earlene Polyak v Buford Evans & Sons (Counter-claim) No. 1:85-0120; and Earlene Polyak v William Boston, Boston Bates & Holt No. 3:85X-108, and Earlene Polyak v Thomas Stack Henry Henry & Stack No. 1:85-0125.

The Honorable Thomas A Wiseman Jr., dismissed complaint against Jim Hamilton etc. within five days and enjoined(App.Cp.51) from filing further claims involving her property in the United States District Court on November 13, 1985. Counter-claim against Buford Evans was dismissed on November 17, and re-manded back to state, Complaint against William Boston Boston Bates & Holt was denied filing on November20, but after dismissing a total of five complaints,Judge Wiseman modified his order to allow complaint against Thomas Stack, Henry Henry & Stack filed on December3, 1985(App. B p. 13).

On December 11,1985, Judge Wiseman took form submitted Request for Restraining Order and denied in a separate order. Appellant submitted Request to Reconsider Denial of Restraining Order, and Judge Wiseman denied in a separate order on December 26, 1985(App. B p. 10 11). A Notice of Appeal was mailed on February 1, 1986, and received by the United States Court of Appeals on February 3(App.Ap.8). But the District Court alleged notice was not received until February 7, 1986, which made appeal one day late(App.A p. 8). The Court of Appeals served show cause on Appellant (App. A p 8) After petitioner submitted date from Court of Appeals and Writ of Mandamus Court took jurisdiction(App.A p 9).

With the disregard of all motions to correct record of appeal by District Court and Court of Appeals for extension of time to file brief,Appellant submitted brief in Request to Reconsider Denial of Restraining Order on April 21, 1986,86-5199. She submitted Writ of Mandamus against Judge Wiseman to correct date on Notice of Appeal,answer motions, and schedule jury trial Thomas Stack Henry Henry & Stack No. 86- 5460 and Writ of Mandamus, to file complaint against William Boston,Boston Bates & Holt

No. 86-5462. On April 30, 1986, Judge Wiseman answered writs in letters to John P. Hehman, Clerk of Court of Appeals and enclosed Order Closing Cases, and Enjoining Appellant again from filing cases in the United States District Court under threat of contempt of Court(App. C p.48).

In letter in answer to 86-5460,Thomas Stack, Henry Henry & Stack, Judge Wiseman refused to change filing date on Notice of Appeal(App.C p.50).

In letter in answer to No. 86-5462, William Boston Boston Bates & Holt, Judge Wiseman appear to explain reason for order of November 13, 1985, enjoining Appellant from filing further cases involiving her property in Lawrence County" That order was entered because of previous filings of Mrs Polyak against various persons in this Court...."(App.Cp52).

Appellant believes that Judge Wiseman is referring to the Courthouse in Columbia, Tennessee,in which Federal and State Court are located in the same building and Judge Wiseman presided.Judge Hamilton presides over state cases, Thomas Stack, Henry Henry & Stack(hired Buford Evans & Sons),and William Boston Boston Bates & Holt represent clients.

Appellant does not have any knowledge or ex-

pertise in the legal profession, but when she did not receive to file briefs in the Court of Appeals, She submitted briefs in Thomas Stack, Henry Henry & Stack No. 86-5199. Mrs Yvonne Henderson notified the avove named to answer appeal(App. A. p. 3).

The Court of Appeals took jurisdiction of this case to affirm Judge Wiseman's dismissal of the Request for Reconsideration of Denial of Restraining Order(App. A p. 4). And denied Rehear En Banc on February 13, 1987. The Court has denied all of pro se litigant's appeals in docket control.

Does the Court of Appeal's affirming of the District Judge's denial of restraining order in which pro se litigant's property rights and interests are still in this property,without jury trial to determine damages,supported by the Statute of Tennessee on which she relies render statutes invalid and repugnent to the Constitution ? And is the denial of restraining order abuse of discreation in favor of various persons in Columbia Court, which District Judge gives reason for enjoining pro se ligitant in letter of April 30, 1986? Does enjoin violate right to sue 1981, and right to inherit 1982? Is the dismissal and denial in docket control due process?

REASONS WHY QUESTIONS REQUIRE PLENARY CONSIDERATION

1. The Court of Appeals affirms the denial of due process and abuse of discreation by District Judge in the Denial of Reconsideration of Denial of Restraining Order against the sale of pro se litigant's property pend-jury trial and renders state statute which protects right and interest invalid as supported by the constitution and laws.

The Court of Appeals affirms the denial of due process and abuse of discreation by District Judge in the denial of reconsideration of denial of restraining order against sale of pro se litigant's property pending jury trial to determine damages of negilence and malfeasance found in allegations in complaint on December 3, 1985. The Honorable Thomas A. Wiseman allows complaint against Thomas Stack Henry Henry & Stack, but does not schedule jury trial, and disregards all motions including Writ of Mandamus No. 86-5460.

Appellant contends that right in property, interest, settlement by agreement in 1976, and investment as a result of agreement, which she retained attorneys to protect her state and constitutional rights and laws is still in her partition of this property.

Although pro se litigant admits that she does not have knowledge or expertise in law and restraining order is poorly constructed, it is plain and simply asks for restraining order against sale by any means including Public Auction, pending jury trial. Judge Wiseman marked treat as motion for TRO or Prelim Injuction denied and this was mailed to Petitioner with front cover on Order entered on December 13, 1985. Appellant had already submitted same form for Restraining Order on five complaints which District Judge disregarded.

The Court of Appeals affirms construed order as preliminary injunction and takes jurisdiction over pro se litigant in extraordinary circumstances to affirm denial of request for reconsideration of denial of restraining order, which was again entered as a separate Order denied on January 6,1986.The Court of Appeals has dismissed or denied all appeals in docket control, and this Order 86-5199 entered on January 5, 1987, disregards request for oral argument again, and it is not recommended for full-text publication.

Appellant disagrees with panel in docket control and contends that District Judge did abuse

discreation in denying restraining order against sale of property near"Saturn Plant,"Spring Hill.

Judge Wiseman dismissed complaint against The Honorable Jim Hamilton and the Circuit Court of Lawrence County,No.1:85-0116, within five days and enjoined pro se ligitant from filing further cases involving the sale of her property in Lawrence County on March 13, 1985, which denies right to sue 42 U.S.C. Sec. 1981, and Fifth and Fourteenth Amendments. Counter-claim against Buford Evans & Sons was dismissed and remanded back to state. The Complaint against William Boston Boston Bates & Holt was denied filing No. 3:85X-108.Prior case 1:84-0083, William Boston's son, Richard Boston has been defended in District Court(App. C 44 45 46).

In letters to John P. Hehman, Clerk of Court of Appeals on April 30, 1986, in answer to Writ of Mandamus to correct filing date on appeal of restraining order, answer motions, and schedule jury trial, Judge Wiseman disregarded all but filing date and refused correction No. 86-5460.(Stack etal)

In answer to Writ of Mandamus to file complaint in William Boston Bates & Holt No. 86-5462, Judge explains March 13, 1985, order to enjoin,"That

order was entered because of previous filings of Mrs. Polyak against various persons in this Court ...," and calls for sanction of pro se ligitant. Appellant believes Judge Wiseman is referring to the District Court in which he presides,which is located in same building with the State Court, Columbia, Tennessee, and the above persons handle cases.

> And the relevant factors determining whether and act is a judicial one relates to the nature of the act itself, whether if is a function normally performed by a judge and to the expectation of the parties.... Stumpt v Sparkman, 435 US at 1107.

The District Judge has dismissed all complaints without Oral Argument, disregarded all motions except request for restraining which was denied in separate order, which is affirmed in the Court of Appeals in docket control and denies due process in conflict with Supreme Court.

> The Supreme Court... has recognized that due process requirements are implicated whenever the enforcement power of government is employed to deprive an individual of and interest, deprived from common law, in peaceful possession,Lindsey v Norbert, 405 US 56 (1972) or use, Mullane v Central Hanover Bank &Trust Co.339 US 306(1950) of real or personal property. And"the assurance of a fair trial before a "netural magristrate" who has no... interest in reaching a conclusion against him in his case. Tuney v Ohio, 273 US 510(1927)

1. Pro se ligitant's constitutional right in real and personal property, interest, investment in restoration and maintenance as supported by partition in kind according to State statute, which she retained Respondents to defend is still in property and jury trial must be scheduled to determine damages.

On December 3, 1985, Judge Wiseman filed Complaint No. 1:85-0125, and separate restraining order was not denied until December 11, 1985. The District Judge found allegations of negilence and malfeasance in complaint. Complaint was filed within one year allowed after nonsuit entered by the Honorable James L. Weatherford, Circuit Court of Lawrence County

Appellant demamded jury trial in complaint, jurisdictional amount, under diversity of citizenship. She was subjected to intense heat, with heart problem, of 102 degrees in which nationwide warning exhisted and she asked two times for time to get better. Appellant confronted Mr. Stack Henry Henry & Stack as set forth in statement of the case to file motion for a New Trial

Mr. Stack signed order to sell property in which Judge Hamilton granted attorney fees but did not grant Appellant any money for restoration and investment in retirement home over her objections

on october 19, 1983. This order was prepared by William Boston Boston Bates & Holt,Case No. 1974.

After Appellant relieved Mr. Stack Henry Henry & Stack, he returned materials and she learned that they did not enter bills, Memorandum Brief,evaluation of property, or arrange for a transcript of the proceedings for appeal. Respondents cashed check with agreement "if we are not successful in Lawrenceburg we will appeal to a higher Court."The check for $1500.00 is in excess as local is about $500.00, Case No. 1974.

> ...any counsel who multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required to satisfy personally such excess costs, pursuant to 28 U.S.C. 1927.

Mr. Stack retained Mr. Evans to survey land without her knowledge or consent, and testified against Appellant on December 26, 1984, for Mr. Evans against Tennessee Statute,in No.10647.

> 23-3-105. No attorney... shall be permitted in giving testimony against client or person who consulted him professionally to disclose any communications made to him....

Appellant was ill again due to acute bronchitis when she was again subjected to denial of due process and relied on medication and Oxygen to try to defend additional forty(40) acres of property,

which the Circuit Court Clerk demanded that she bring a copy to him from the County Court Clerk, before he would allow appeal to this trial conducted by unlicesned surveyor without he knowledge or permission. It is her opininon that the map drawn by Mr. Evans is an invalid representation of this property, and that map bears a decided correlation to order, which supports that porperty cannot be divided. This property was divided by settlement by agreement in 1976, which is suported by Tennessee Statue and case law.

Appellant contends that inherited right of one-third undivided interest of Appellant and investment as a result of settlement by agreement to divide in 1976, which she retained the above Respondents to defend her state and constitutional rights and laws is still in this property and Restraining order is needed to protect these rights until jury trial to prevent irreparable damage and a right to never be regained in Appellant's retirement home.

Claim of lack of assistance of trial counsel presented important constitutional question warranting writ of certiorari. Carnely v Cochram, FLA 1962 82 S Ct 884 969 US 506.

3. Pro se litigant relies on Tennessee Statutes supported by case laws tc protect state and constitutiona rights in property and she was obligated to seek relief in federal court under diversity of citizenship, which Court of Appeals affirming of District Judge abuse of discreation in denial of restraining order renders statutes and case laws invalid.

Appellant was obligated to seek relief in federal courts after Judge Hamilton denied Motion to Forward Records to Court of Appeals in Tennessee on November 7, 1985 in Case No. 10647.This case arises out of No. 1974, Frank Hulen and Wilma Lesnansky(1:84-0082, 84-6090), which District Judge inferred in telephone conservation August 1983,that Appellant could Petition United States Federal Court for relief, but shortly dismissed. She again sought relief in Complaint No. 1:84-0083, but dismissed res-judicata, which was consolidated over pro se litigant's objections by Court of Appeals Nos.84-6090(D.C.1:84-0082)and (85-5032/5101/5147 (D.C. 1:84-0083). The Court of Appeals affirming District Judge's dismissal of 1:84-0083 as res judicata when 1:84-0082 is not final order is against Supreme Court ruling.

Supreme Court has statet it as"familiar law" that only final judgment is res judicata. G & Merrian Co. v Saafield,1916 241 Us 22 28 S Ct 477 60 L Ed 868.

Prior to dismissal of Motion to Froward Records case No. 10647, was denied appeal to the Court of Appeals, Tennessee on November 7, 1985, by Judge Hamilton, Appellant learned that Rule 5(a) had been amended to eliminate the filing of a Notice of Appeal on August 15, 1984, in Rules of Appellate Procedure. She believes that this amendment allows for discrimination against race, sex, non-resident, and pro se litigant and unconstitution in state and constitutional rights and laws. Appellant submitted Complaint No. 1:85-0116, and joined by 28 U.S.C 1441(c) Nos. 1:85-0120, 1:85-0125; 3:85X-108 in the United States District Court.

The court of Appeals affirms District Judge's denial of restraining order in docket control under local rule No. 9(d)(2) as dismissal of all pro se ligitant's cases without oral argument or hearing.

> Even though District Court found constitutional question frivilous, it is required practice to give the United States Attorney General notice and leave it to him to decide whether to interviene. Wallach v Lieberman, C.A.N.Y.1966 366 F 2d 254.

The State of Tennessee acknowledges right of individual representation and provides a form in Tennessee Law Digest 1987 edition page No. 1.

Appellant finds that her right in property is protected by Tennessee Statute 29-27-117.

> If... exact parition cannot be made without material injury to the parties or some one of them ..., may make partition as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares. T.C.A. 1932.

And kind and severaly by statute and case law.

> The Court may... in accordance with the wishes of one or more of the cotenants, order an allotment of shares ... in kind and severalty, and direct sale of other portion if is not susceptable to partition in kind. Vandenburg v Molder, 4 Tenn. Civ. App. (Higgins)111(1913)

Appellant has restored, maintained, and pays all expenses on her agreed partition of property which includes retirement home to this date and supported by case law in the United States and Tennessee.

> ... the promise with the knowledge of the promiser takes possession of land and makes improvements. Courts in almost all states have granted specif performance. Hagerty v Hagerty, 172, 259(1919). " Perhaps more frequently Courts have said taking possession and making improvements constitutio"good consideration in equity" Lindell v Lindell, 135, Min. 368 371(1919).

And more recent Tennessee case,"Parole partition of land followed by possession is binding and enforceable." Martin v Taylor,521 S.W.2d 582(Tenn. 1975). The loss of Appellant's property supported by statute is irreparable damage and loss of right to property.

CONCLUSION

Appellant prays that her case will be heard to determine that the sale of her property is irreparable damage and the loss of a right to never be regained in her retirement home, and that this case will be referred back to determine amount and extent of damages in jury trial in the United States District Court.

On the 22nd day of May, 1987.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed First Class to Mr. William B. Cain, Attorney At Law, 29 Public Square P.O. Box 981 Columbia, Tennessee 38402, and all parties of interest in this cause.

I certify that the above information is true to the best of my knowledge and belief.

STATE OF MICHIGAN
COUNTY OF WAYNE

My commission expires_____

_____
Notary Public

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit, Cinnati, Ohio.

Earlene Polyak v Thomas Stack, Henry Henry & Stack No. 86-5199. Denial of Request for Reconsideration of Restraining Order.

Notice of Appeal filed February 3, 1986.

Order entered: January 5, 1987.

Before: GUY, Circuit Judge; EDWARDS, Senior Judge; and EDGAR, District Judge.

Rehearing En Banc: Denied March 3, 1987, by above panel.

The Request for Oral Argument denied.

The Motion to Dismiss submitted by Thomas Stack Henry Henry & Stack was denied in order filed on January 5, 1987. The District Court's denial of preliminary injunction was affirmed.

Notice of Appeal to the Supreme Court of the United States submitted on March 6, 1987, and filed in the United States Court of Appeals on March 9, 1987.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

v

Appeal No. 86-5199
Dist.No.1:85-0125

THOMAS STACK AND
HENRY HENRY & STACK

Defendants-Appellees

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Appellant Earlene Polyak, hereby gives notice of appeal to the order affirming the District Courts Denial of Request for Reconsideration of Denial of Restraining Order of sale of her retirement home involved in legal malpractice claim against Defendant Appellees on March 3, 1987, to the upreme Court of the United States.

The United States Court of Appeals has taken jurisdiction to review this case and renerded denial of petition to rehear on March 3, 1987.

This appeal is taken under 28 U.S.C. 1254(2).

On the 6th day of March 1987.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

I certify that a true copy of this pleading has been mailed to Mr William B.Cain and the U.S District Court Nashville, Tennessee 37203

UNITED STATES COURT OF APPEALS
John P. Hehman,Clerk

June 19, 1986

Mr. Thomas Stack
Henry Henry & Stack
Post Office Box 458
Pulaski,Tennessee 38478

Re: Case No. 86-5199 Earlene Polyak
vs
Thomas Stack and Henry
Henry and Stack
Dist. No. 1:85-0125

Dear Mr. Stack:

This letter is to advise you that the appelees brief is due to be received in this office not later than July 21, 1986.

If you have any questions with regard to this, please advise.

Yours very truly,
John P. Hehman,Clerk
Signed
Yvonne Henderson
Case Supervisor

cc: Ms. Earlene Polyak

THE JOINT APPENDIX WILL BE DUE ON OR BEFORE AUGUST 11, 1986. *

* Petitioner submitted Joint Appendix with Brief on April 21, 1986 by Express Mail.

No. 86-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED JAN 5 1987
NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

EARLENE POLYAK

Plaintiff-Appellant

v

O R D E R

THOMAS STACK AND
HENRY HENRY & STACK

BEFORE: GUY, Circuit Judge; Edwards, Senior Judge; and EDGAR, District Judge

The plaintiff appeals the order denying her motion for a "restraining order" in this diversity action for legal malpractice. The defendants now move for dismissal of the appeal on grounds the order is nonappealable. That motion was referred to this panel pursuant to Rule 9(a), Rules of the Sixth Circuit. The appeal is fully briefed.

This action arises from Tennessee state court proceedings which resulted in and order for the partition sale of farm property jointly owned by plaintiff and her two siblings. In her pro se complaint, the plaintiff claimed that the adverse decision in those proceedings resulted in part from the negligent performance of retained counsel--the defendants herein. In addition to damages, however, she sought injunctive relief prohibiting

the sale of the farm property. To that end, she submitted a proposed"restraining order" enjoining "anyone associated (with) or employed (by the defendants) from seizure, s e by any means, including Public Auction" of the property. The district court summarily denied that proposed order by nc tation. This timely appeal followed.

The defendants argue that the district court's order was one denying a temporary restraining order which, except in extraorinary circumstances, cannot be appealed either 28 U.S.C. 1291 or 1292(a)(1). See generally Petraco-valley Oil and Refining Co. v. United States Department of Energy, 633 F. 2d 184 199(T.E.C.A. 1980). The district court, however, construed the order as a motion for either a temporay restraining order or a preliminary injunction. Given pro se status of the pendency of the action, We conclude the district court's order may be construed as a preliminary injunction. This court therefore has jurisdiction to review that order under 28 U.S.C. 1292(a)(1).

Upon examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a) Federal Rules of Appellate

Procedure. Because plaintiff's claim is for legal malpractice and defendants have no interest in the property which is the object of the state court judgment, the district court did not abuse its discreation in summarily denying the proposed injunctive relief.

It is ORDERED that the motion to dismiss be and it is hereby denied.

It is ORDERED further that district court's denial of preliminary injunction is hereby affirmed. Rule 9(d)(2), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman

No. 86-5199
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
MAR 1987

EARLENE POLYAK

Plaintiff-Appellant

v ORDER

THOMAS STACK AND
HENRY HENRY & STACK

Defendants-Appellees

BEFORE: GUY, Circuit Judge, EDWARDS, Senior Circuit Judge and EDGAR U.S. District Judge.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing en banc has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY THE COURT
Signed John P. Hehman

No. 86-5199

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

v

O R D E R

THOMAS STACK AND
HENRY HENRY & STACK

Defendant-Appellees

The plaintiff appeals the order denying a motion which the district court construed for a temporary restraining order or a preliminary injunction.

The record shows the order was docketed on December 13, 1985. The plaintiff filed a timely-served motion for reconsideration which was denied in an order docketed on January 7, 1986. The plaintiff's notice of appeal was filed February 7,1986 i.e., 31 days later.

Rule 4(a) Federal Rules of Appellate Procedure requires the notice of appeal in civil action to be filed within 30 days of the order or judgment being appealed. Here the plaintiff's notice of appeal was not filed within that time.Therefore,

It is ORDERED that the plaintiff show cause in writing no later than 21 days from the file date of this order why this appeal should not be dismissed for lack of appellate jurisdiction. The

petitioner may do so by showing the district court in fact the notice of appeal by February 6, 1986, or that the district court has granted an extension of time in which to file the notice of appeal. See Rule 4(a)(5), Federal Rules of Appellate Procedure.

ENTERED BY ORDER OF THE COURT
Signed John P. Hehman

Letter:

UNITED STATES COURT OF APPEALS
John P. Hehman Clerk Telephone684-2953

April 18, 1986

Ms. Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

Re: 86-5199-Earlene Polyak vs Thomas Stack Henry Henry & Stack

Dear Mrs. Polyak:

In accordance with our telephone conservation on this date, enclosed is a copy of the notice of appeal which indicates that it was received in this office on February 3, 1986.

Yours very truly,
John P. Hehman Clerk
Signed Yvonne Henderson
Case Supervisor

Note:
This clerical mistake was finally corrected when the Judges took jurisdiction and stated that District Court must have received notice of appeal on February 3, 1986. Peitioner submitted zerox copies of certified dates in post office. She submitted Writ of Mandamus

APPENDIX B

In the United States District Court, Middle District of Tennessee, Nashville, Division.

Earlene Polyak v Thomas Stack, Henry Henry & Stack No. 1:85-0125.

Filed December 3, 1985.

Restraining Order denied on September 11, 1985, by the Honorable Thomas A. Wiseman Jr. Chief Judge of the United States District Court, Middle District, presiding at Columbia, Tennessee.

Request for Reconsideration of Denial of Restraining Order denied on January 6, 1986.

Appellant submitted complaint against Jim T. Hamilton, Individually and in his Judicial capacity as Circuit Judge and the Circuit Court of Lawrence County,No. 1:85-0116, and under 28 U.S.C. 1441(c) joined Counter-claim Earlene Polyak v Buford Evans & Sons and Earlene Polyak v Thomas Stack Henry Henry & Stack, and Earlene Polyak v William Boston, Boston Boston Bates & Holt No.3: 85X-108. Judge Wiseman remanded Buford Evans No. 1:85-0120 back to state, denide filing 3:85X-108, but filed 1:85-0125, and issued process. No. 1:85-o116, was dismissed on November 13, 1985.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

FILLED 12-26-85
by Sherry Tipton

EARLENE POLYAK

Plaintiff

VS

THOMAS STACK AND
HENRY HENRY & STACK

JUDGE WISEMAN
CIVIL ACTION NO.1:85-0125
Lawrence Law

REQUEST FOR RECONSIDERATION OF
DENIAL OF RESTRAINING ORDER

Petitioner Earlene Polyak, respectfully requests that this Honorable Court reconsider the denial of the temporary reatraining order issued on December 13, 1985, which was submitted in the above styled case against seizure and and sale by Public Auction, or any means, of her real a d perso al property located o Jonestownroad and Marcella Road in the 14th Civil District of Lawrence County,Tennessee, pending all of the Court process in this and related cases concering this property.

The petition for removal of the above entitled civil action to this Court is on the grounds that Petitioner has been denied by State Court proceedings her rights secured and guranteed to her by the laws providing for equal civil rights of citizens of the United States by the Fifth and Fourteenth Amendments.

DENIED THOMAS A WISEMAN JR. JAN 6, 1986

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE, DIVISION

EARLENE POLYAK
Plaintiff

vs Civil Action No.1:85-0125

THOMAS STACK
HENRY HENRY & STACK

RESTRAINING ORDER

The above entitled matter having come to be considered by a Request for a Restraining Order on the 18th day of November, 1985, from the Plaintiff and Petitioner Earlene Polyak, and having examined the Petition for Removal and Exhibits, duly verifoed by the Plaintiff, the Court finds that said Plaintiff is entitled to a Restraining Order to be issued by the office of the Clerk.

IT I THEREFORE, ORDERED that anyone associated with the above be restrained from seizure, sale by any means including Public Auction, of Plaintiff's real or personal property located on Marcella and Jonestown Roads in the 14th Civil District ı Lawrence County, Tennessee, pending the above action.

On the _____ day of_____1985.
Treat as motion for TRO
or Prelim Injunction _____
Denied signed Thomas A. Wiseman Jr. DEC 11,1985 JUDGE

CIVIL COVER SHEET

PLAINTIFFS	DEFENDANTS
Earlene polyak 3179 Middlefield Drive Trenton, Michigan 48183	Thomas Stack Henry Henry & Stack 119 South First St. Pulaski, Tennessee 38478

County Wayne

Basis of jurisdiction

x U.S. Plaintiff x U.S Defendant

CAUSE OF ACTION

Denial of Civil and Constitutional rights in Fifth and Fourteenth Amendments

Reverse Side

Citizenship of principle Parties(if Diversity)	DEMAND	OTHER
Citizen of this State	$250,000.00	$250,000.00 Equitable Relief

Comments

This case is being submitted due to denial of civil and constitutional rights provided by the Fifth and Fourteenth Amendments. And in conjunction with Case Jim T. Hamilton, Individually and in his judical capacity as Circuit Judge, Jointly and severally, and the Circuit Court of Lawrence County, and Buford Evans v Earlene Polyak, and Earlene Polyak v William Boston Boston Bates & Holt.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CARLENE POLYAK DEC 3 1985 FILED

V NO. 1 85 0125

THOMAS STACK

ORDER

Although improperly styled "Petition for Removal this case appears to be an action for attorney negilence. Diversity exists, and jurisdicitonal amount is alleged. This pleading has been indulged with every reasonable presumption because of plaintiff's pro se status. Although it contains many of the same allegations and requests for relief made in plaintiff's numerous other frivilous filings in this Court, this petition presents allegations of attorney negilence or malfeasance which allow it to survive initial review. It is filed within one year after the order on nonsuit was entered by Judge Hamilton (Judge Weatherford signed) of similar suit in Lawrence County.

The injunction hereto issued prohibiting Mrs. Polyak filing further suits in this Court is modified to permit the filing of this petition. The Clerk will file and issue process.

Signed Thomas A Wiseman Jr.

UNITED STATES DISTRICT COURT
MIDDLE DIESTRICT OF TENNESSEE

EARLENE POLYAK

Plaintiff JURY DEMAND

VS NO. 1:85-0125

THOMAS STACK
HENRY HENRY & STACk

Defednants

THIRD MOTION TO SCHEDULE TRIAL

Plaintiff Earlene Polyak, moves that the Court schedule jury trial in the above styled case. First motion to scheduled jury trial submitted on November 18, 1985, second motion submitted on June 20,1986, The complaint was answered pursuant to Rule 7 FRAP on June 4, 1986. Plaintiff believes t that pursuant to Local Rule11 (a)(2) she is exempt to pretrial conferences scheduling conferences and pretrila procedure. She asked for jury scheduled in October, 1986, and due health problems and convenience of the Court suggested alternative of April 1987. Plaintiff moves for jury trial date on docket so she will know when to expect to appear and make preparations for appearance in Court.

On 18th day of September 1986.

Signed Earlene Polyak
with address and telephone no.

PUBLISHER'S NOTE:

THE FOLLOWING PAGE IS UNAVAILABLE
FOR FILMING: 15

Appendix C

CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS

CIVIL ACTION NO. 10612

THOMAS STACK
HENRY HENRY & STACK
Defendant

NOTICE OF NONSUIT

Plaintiff Earlene Polyak, pursuant to Rule 41.01 Tennessee Rule of Civil Procedure, hereby gives notice of notsuit without prejudice in Civil Action No. 1062, filed against Thomas Stack Henry Henry & Stack on July 27, 1984, to Plaintiff refiling cause of action.

Date: August 31, 1984.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK
Plaintiff

VS

NO. 10612

THOMAS STACK
HENRY HENRY & STACK

O R D E R

This cause came on to be heard and was heard on the 9th day of October, 1984, before the Honorable Jim T. Hamilton, Circuit Judge on motion

of the plaintiff for this Court ot enjoin the sale of certain rea estate, which was recently ordered sold from a partition suit which was heard in the Chancery Court of Tennessee.

The Chancery Court heard proof, ordered the real estate sold for partition. The plaintiff appealed this decision to the Court of Civil Appeals where the decision of the Chancery was upheld. The plaintiff then petitioned the Supreme Court of Tennessee for certiorari, and this was denied.

It is therefore Ordered,by this Court that the motion of the plaintiff for this court to enjoin the sele of this real estate for partition is dismissed. It is further ordered that the cost of this case be adjudicated against the defendant for which execution may issue if necessary.

This 9th day of October, 1984

Signed Jim T. Hamilton

APPROVED FOR ENTRY

EARLENE POLYAK

THOMAS STACK
HENRY HENRY

IN THE CHANCERY COURT
FOR
LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

Plaintiffs

VS No. 1974

EARLENE POLYAK

MEMORANDUM BRIEF

On July 29, 1983, a hearing was held in the above styled cause before the Honorable Jim T. Hamilton, by consent of all parties and their counsel, at Columbia, Tennessee.

The issue: in the case raised by the parties pleadings were:

(1) whether the subjected property can be partitioned in kind or, alternatively, whether it is manifestly to the advantage of the parties that it be sold for partition or so situated that it is not feasable or practical to divide in kind.

(2) Whether there has been a parole partition of this property in kind in reliance upon which Defendant has made substantial improvements on the house situated on subject property.

This action is governed partly by the provision of Statute at TCA 29-27-201,et seq. It is also governed by a substantial body of case law,

pertinent portions of which will be cited herein.

PARTITION IN KIND FAVORED OVER SALE FOR PARTITION

The party insisting on a sale must show clearly by the facts that neccesity for such sale and nothin short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one(1) of the tenants in common. Reeves v Reeves, 58 Tenn 669, Vandenburg v Molder,4 Tenn. Civ. App.(4Higgins)III.

Parition in kind at common law was a matter of absolute right. Sale may not be ordered without good cause being shown. The applicant for sale must show the existance of such a state of facts for sale as, under the statute, will be sufficient to rebut the presumption of law that each of the parties is entitled to an actual partition. The onus is always on he who seeks sale.

Bevins v George, 255 S.W. 2d 409

BURDEN OF PROOF

The burden of proof where a party petitions for sale for partition clearily rests heavily on that party.

The mere opinion of a witness without facts sustaining it that the property can not be

partitioned and must be sold is insufficient. A sale for partition based thereon will be held "utterly void".

Davidson v Bowden, 37 Tenn. 129
Ross v Ramsey, 40 Tenn. 15

Again, nothing short of the clearest and most staisfactory proof could justify the Court in ordering sale against the protest of one(1) of the tenants in common.

Reeves v Reeves, 58 Tenn.669
Vandenburg v Molder supra:
Glen v Gresham, 602 S.W. 2d 256

PARTITION IN KIND IS A SEPARATION BETWEEN OWNERS

It is not a conveyance and, therefore, not governed by the statute of frauds. An agreement for partition between co-tenants may be proved by parole evidence.

Fisher v Loague, 3 Tenn. Cas. (Shannon) 123
Meachum v Meachum, 19 S.W. 757 91 Tenn. 532
McBroom v Whitefield, 108 Tenn. 422
McCaulty v Peoples, 4 Tenn. App. 448

Where on tenant in common, at his own expense puts improvements on common property, and afterwards partition in kind is made, such imporvements should be alloted to the share of the party making them, and without any charge for their value.

Polk v Gunther, 107, Tenn. 16
Broyles v Waddell, 58 Tenn 32

The cost of improvements made can be allowed to such a co-tenant; that co-tenant is not merely limited to the amount by which those improvements have increased the property.

Wilburn v Kingsly, 3 Tenn. App. 88

If exact partition can not be made without material injury to the parties, or some one of them (the Commissioners), may make partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares, and report the facts.

T.C.A. 29-27-549
Hardin vs. Cogwell, 52 Tenn. 549
Burdett vs. Norwood, Tenn. 491

COURT HAS GENERAL AND EQUITABLE POWERS

A Court of equity in a partition case does not act merely in a ministral capacity, but founds itself on general principles of equity according to its own notion of equal justice and equity between rights of the parties interested.

Sproles vs. Gray, 296 S.W. 2d 839

PROOF IN CASE

No summary will be made of the proof adducted at trial. The Court has its own notes and rec-

olection of what was established by both sides at this hearing. Defendant will rely upon these facts and the application of the above-cited law thereto.

Respectfully submitted,

Signed Thomas Stack
Attorney for Defendant
Earline Polyak

After verbally ordering property sold on July 29, 1983, Judge Hamilton signed formal order prepared by Boston Bates & Holt, signed by William Boston and Thomas Stack on October 19, 1983. Appellant objected to this order being signed to Thomas Stack and Judge Hamilton on this date by telephone, which did not award her any compensation for restoration and maintenance of house since 1976.

The taxpayer's copy of 1983, Property Tax Receipt No. 500-83-07353, Mrs Rena Ann Hulen, Summertown Tennessee 38483, shows 100% improved value of $8100.00, which is over one-half value of land and all added by Defendant and her husband.

Mr. Buford Evans evaluated property with three parts of equal value with total land value of $33,690.00 and total dwelling value $6,330.00, which included Appellant's improvements. Defendant demanded a New Trial and Mr. Stack submitted motions:

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiffs

VS CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Court in Lawrence County, Tennessee, While holding Chancery Court for Lawrence County Tennessee, upon complaint hereto filed in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the court found in memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different

types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eualn Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of Oct. 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack

PUBLISHER'S NOTE:

The following pages are unavailable for filming:

25-30

THE CIRCUIT COURT OF LAWRENCE COUNTY
LAWRENCEBURG, TENNESSEE
HON. JIM T. HAMILTON, PRESIDING

BUFORD EVANS

Plaintiff

VERSUS

EARLENE POLYAK

Defendant

JURY TRIAL
Reporter's Partial Transcript
December 26, 1984

APPEARANCES FOR COUNSEL

For Plaintiff — Larry Douglas Brandon
320 East Main Street
Mufreesboro,Tennessee
615-890-8517 37130

For Defendant — In Propria Persona

JAMES LEONARD HOBBY
Court and Deposition Reporter
365 Holly Grove Road
Lewisburg, Tennessee 37091
(615) 359-4455

Evans v Polyak pages 4, 5, 6,

Mrs. POLYAK: ... I have requested a continuance .. My doctor, Dr. Delfan Santos ...

Her diagnosis is as follows: coronary artery disease, unarable angina, lung atelectsis, which affects her ability to perform even basis duties.

Patient is on several medications for her consirion. Because of patients multiple health problems and acute arthritis, we recommend the patient to seek a warmer climate.

... When I was in Florida, Dr. Herman said, Mrs.

Polyak is in poor health with cardiac problems necessitating immediate medication.

I called several times to tell you that I have another doctor down there. I had another arthritic attack there. My eyes, I could not see.

I came here with -- my son and my husband brought me in the back seat of a car on pillows and I have been in a motel all day, and I took oxygen, last night to be here.

And I think this is harrassment to bring me here, today, in my state of health and against the Constitution, in which it says the eight ... that we should not be inflicted with cruel and unusual punishment, and I think it is unusual punishment for my health to be here today.

THE COURT: All right, since we have the jury here..

MRS. POLYAK: Your Honor, I have already listened to the jury in the hallway. I understand they are tired and they don't want to be here, because its Christmas. I understand this jury has been coming in quite a while. I already feel their hostility toward being here.

THE COURT: Well,

MRS. POLYAK: and I want to put this on record.

THE COURT: Well, you've got it on record ... I am going to overrule your motion asking me to disqualify myself. I'm going to overrule that motion .....

Evans v Polyak 35, 36, 37

Thomas Stack testifies against Defendant (former attorney.) Plaintiff believes Judge prejudiced

Q. Didn't I put my own notice of appeal in on November 14, 1984? You had not appealed case

MR. STACK: Your, Honor --

THE COURT: Mrs. Polyak I am going to interrupt you, here, and I'm going to make a statement to this Jury concerning that aspect, although it is irrelevant to this case. I don't know the exact dates but I will tell this jury that M. Stack appeared in my Court. He had filed a motion for a new trial .. He appeared in my Court on the day that he was to appear to argue motion, before me, seeking for me to chang my mind and grant a new trial.

Prior to that argument, Mrs. Polyak appeared there and asked me to allow her to relieve Mr. Stack from any further representation ...

I then allowed Mrs. Polyak to file here own motion, which was done in her own handwriting on a yellow piece of legal paper. I did over strenuous objection of counsel on the other side, who was Mr. Boston. I overruled his objections and allowed her to present that as her motion for a new trial. I allowed her, that day, over strenuous objections from Mr. Boston to argue that case and argue that motion on her own behalf.

Mr. Stack, I assume, was back in Pulaski, peacefully practicing law and I want you to understand that that is what he did in this case and I am not going to entertain any further questions concerning that Mrs. Polyak...

MRS. POLYAK: I have one question.

THE COURT: All right. Ask it.

Q. by MRS. POLYAK: Mr. Stack did you hear Mr. Boston ofject - - -

THE COURT: I'm not going to allow that. I'll say this and I put it in the record, Mr. Boston objected strenuously, that day ...

MR. STACK: Your Honor, if I may ... there was a long delay in the order actually being entered.

EVANS V POLYAK

ALEX POLYAK testifies. Defendant believes jury prejudiced again by Judge Hamilton when he yelled at her for about the fifth time. Page 39 40

THE COURT: Mrs. Polyak, I hate to interrupt you but I'm interested in his testimony concerning any knowledge he has of what the issues of the lawsuit we are here about today, is, and that is the contract with Mr. Evans (Defendant did not have a contract with Mr. Evans) .... that's what you need to ask about.

MRS. POLYAK: Your Honor, I would like to establish that this man is a well-respected man, He has come to Tennessee.

THE COURT: ll right I'll take it --

MRS. POLYAK: He has worked in the woods --

THE COURT: Mrs. Polyak, you wait just a minute when I say something.

MRS. POLYAK; Yes sir.

THE COURT: I'll take judical notice and I am sure he is a well-respected man... Now if he knows anything anout that contract, that's what I want to hear.

Evans v Polyak pages 52 53

JUDGE HAMILTON: (part of jury instruction)

Ladies and gentleman, you have heard a lot in this case about a partition suit. Now I'm going to very briefly define for you, basically what a partition suit is.

A partition suit is a suit that is brought by one or more heirs to an estate. For instance if you have four children in an estate, and there is left to them in equal shares, a tract of land. If they are unable to agree upon an equal division of that land then one or more of them may file in court what is called a partition suit and ask that the land be sold and the proceeds of the sale divided equally among the heirs, and that is what a partition suit means.

One side says, "we can't divide it, equally any way except to sell it and divide the money, equally. The other side says, "No that's not true. We think we can divide the land up and give an equal portion of the land, so that is basically what a partition suit means ....
(The Judge reads from a red book defining the law on agency, which the Court reporter left out of the transcript).

.....

Mr. Ramsey Leathers Clerk
100 Supreme Court Building
Nashville, Tennessee 37219

COURT OF APPEALS
STATE OF TENNESSEE
NASHVILLE 37219

September 9, 1985

Dear Counsel:

RE: BUFORD EVANS

VS

EARLENE PLOYAK

We are returning herewith the copy of the notice of appeal forwarded to this office in the above case.

An amendment to Rule 5 (a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN

BUFORD EVAns 7 sons

vs CIVIL ACTION NO.: 10657

EARLENE POLYAK

O R D E R

This case came on to be heard and was heard before the Honorable Jim T. Hamilton, on plaintiffs Motion to Forward records of this case from the Circuit Court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED to the Court that Plaintiff's Motion be denied.

This 7th day of November, 1985.

Signed Jim T. Hamilton
JIM T. HAMILTON
CIRCUIT JUDGE
PART 1

PUBLISHER'S NOTE:

The following pages are unavailable for filming: 39- 47

UNITED STATES DISTRICT COURT
Middle District of Tennessee
800 United States Courthouse
Nashville, Tennessee 37203

Office of the Clerk 615-251-7178

DATE: MAY 02 1986

RE: 1:84-0082; 1:84-0083; 1:85-0116; 1:85-0120; 1:85-0125 and 3:85X-108

JUDGE WISEMAN

ENCLOSED IS A COPY OF THE FOLLOWING:
ORDER(S)

signed by the Judge on MAY 02 1986 and entered on the docket by the Clerk on MAY 02 1986 in the above styled civil action.

CLERK U. S. DISTRICT COURT

by: SHARI TIPTON

Enclosure

xc: John Hehman, Sixth Circuit Court of Appeals
Earlene Polyak
William Boston
Larry Brandon
Joe W. Henry Jr.
Thomas Stack
Charles Holt
Robert E. Boston

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
MAY 2 1986

IN RE:
EARLENE POLYAK

ORDER

I hereby rescue myself from all matters involving Mrs. Earlene Polyak. These matters are to be returned to the clerk for reassingment. The judge to whom these matters are assigned should be furnished with allprevious filings and closed cases involving Mrs. Polyak including order of the undersigned enjoining rer from filing further cases for the purpose of consideration of whether a show cause order should issue to her to show cause why she should not be held in contempt of such order.

Signed Thomas A. Wiseman Jr.

This order was appealed on May 7, 1986, and after waiting for a briefing schedule, which did not arrive after motions and telephone calls a brief was filed by Petitioner. The Honorable Thomas A Higgins, District court refused filing copy of brief and it was returned.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE 37203

April 30, 1986

Mr. John P. Hehman, Clerk
United States Court of Appeals
for the Sixth Circuit
U.S.P.O. & Courthouse Building
Cincinnati, Ohio 45202

Re: Case No 86-5460, Mrs Earlene Polyak
Petition for Writ of Mandamus

Dear Mr. Hehman:

I frankly do not know how to answer this petition. It appears Mrs Polyak wants me to change the records of the Clerk's office from February 7, 1986, to February 6, 1986 sa as to make her appeal timely,This I refuse to do

Yours very truly,

Signed Thomas A Wiseman Jr.

This writ of mandamus concerned the disregard of motions to correct record and schedule jury trial in Thomas Stack Henry Henry & Stack No:1:85 0125. The Court of Appeals did take jurisdiction and correct notice of appeal to Denial of Reconsid eration of Restraining Order Appeal No. 86-5199, denied by Judge Wiseman. Notice of Appeal was mailed by certified mail on February 3, 1986, by certified mail and timely received before February 6, 1986. This case is pending in the Court of Appeals, and is further evidence of denial of due process in the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Received for entry
November 13, 1985

EARLENE POLYAK

VS

Civil Action No. 1:85-0116

JIM T. HAMILTON, Individually and in his judicial capacity as Circuit Judge, Jointly and severally, and The CIRCUIT COURT OF LAWRENCE COUNTY

ORDER

For the reasons stated in the Memorandum contemporaneouslyfiled herewith, the application for extraordinary relief is denied and the case is dismissed on the Court's own motion. No process shall issue but a copy of this memorandum will be mailed to defendants.

Plaintiff Polyak is expressly enjoined from filing any further actions in this Court regarding partition sale of property in Lawrence County without express permission of this Court.

Signed Thomas A. Wiseman

THOMAS A. WISEMAN JR.
CHIEF JUDGE

Note: The above case was entered and dismissed within five days of filing including a week end and summons were not issued, without any oral argument or hearing of any kind.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT FO TENNESSEE

April 30, 1996

Mr. John P. Hehman, Clerk
United States Court of Appeals
U.S.P.O. & Courthouse
Cincinnati, Ohio 45202

Re. Case No. 86-5462 Mrs Polyak
Petition for Writ of Mandamus

Dear Mr. Hehman:

This petition complains of the action of the undersigned in failing to file and issue process on a complaint for Mrs. Polyak against William E. Boston. I have not previously acted upon this complaint because I was considering the issuance of a show cause order upon Mrs Polyak to show cause why she should not be held in contempt of the previous Order of November 23, 1985, whereby Mrs Polyak was enjoined from filing any further suits in this Court arising out of the patrition sale of her property in Lawrence County. That Order was entered because of previous filings of Mrs Polyak against various persons in this Court, all stating essentially the same facts, and arising out of state court proceedings which had been fully ligitated and adjudicated. I felt Mrs. Polyak was abusing the process of the Court. My decision has been reinforced by the petitions for

writ of mandamus received today. She has taken an inordinate amount of this Court's time to the determmint of othe ligitants and should be severely sanctioned therefor.

I have rescued myself concerning Mrs. Polyak and a copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,
Signed Thomas A. Wiseman

Note: Judge Wiseman presides at the Columbia, Tennessee Division of the United States District Court for the Middle District of Tennessee, which is located in the same building as the State Court. Petitioner believes Judge Wiseman is referring to the Columbia Court in which The Honorable Jim Hamilton presides over state cases,and cases are handled by William Boston, Boston Bates & Holt,and Thomas Stack Henry Henry & Stack(Buford Evans was retained by these lawyers). The petitions for Writ of Mandamus were submitted to schedule jury trials in No. 86-5460, William Boston Boston Bates & Holt and No. 86-5462, Thomas Stack Henry Henry & Stack in United States Court in Nashville.

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon motion this day filed by defendant, personally in her own behalf, Statement and argument of the Defendant, Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston, Bates & Holt and Judge Hamilton and entered December 20, 1983.

ORDER

This cause came to be heard on this the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, on the Motion for a New Trial or for Alteration or Amendment of judgment of the order previously filed herein by the Defendant, Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of said Earlene Polyak to be be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned Motion not be heard in this Court IT IS THEREFORE ORDERED are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc, be and hereby dismissed. This order was signed by Thomas Stack, William Boston and Judge Hamilton and entered January 10, 1984.

The Notice of Appeal was mailed to the Chancery Court of Lawrence County on December 30, 1983, and a copy was mailed the the Court of Appeals in Nashville, Tennessee.

On july 26, 1984, Mr. Evans filed a complaint against Appellant in the Circuit Court of Lawrence County, Case No. 10647, Buford Evans v. Earlene Polyak

After the Trial Clerk filed the technical record seventeen days after notice of appeal case was suddely dismissed, but appellant was allowed to submit brief on technicalities after petition to rehear was allowd by the Courts of appeals.

It was decided that she should have appealed the order entered by Mr. Stock on January 10,1984 without her knowledge, instead of the judgement entered by William Boston on December 20, 1983. This unappealable was enter after Judge Hamilton instructed appellant to appeal it on December 19, 1983.

Appellant submitted timely brief on Feruary 23, 1984, and Statement of Evidence on March 2, 1984, but appeal was never heard, and case was dismissed on april 26, 1984. The pertinent part of the decision is as follows:

> And it appearing from the record that appellant's motion to alter and amend was heard on December 19, 1983, that on January 3, 1984 appellant filed a notice of appeal "From the from the Fial judgment entered on December 20, 1983, but the order overruling appellant's motion to alter of amend was not entered until January 10, 1984.
> ....and it appearing that the judgment from which appeal was sought is not a final judgment appealable as a right under Trap Rule 3 in that said judgment orders the sale of property but does not confirm any sal or transfer.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK
Plaintiff

JURY DEMAND

VS

No. 1:86-0036

WILLIAM BOSTON
BOSTON BATES & HOLT
Defendants

MOTION TO SCHEDULE JURY TRIAL

Plaintiff Earlene Polyak moves that this Honorable Court schedule jury trial in the above styled case. She has submitted a motion to correct appeal to show that she appealed denial of petition to rehear pretrial issues and closing case by the Honorable Thomas A. Higgins an August 1, 1986, pursuant to FRAP-"order or part there of appealed from" Plaintiff contends that the District Court's failure to schedule jury trial denies pro se ligitant equal access to justice. She moves that the above styled-case be placed on the active docket of October 1986, or April, 1987.

On the 18th day of September, 1986.

Respectfully submitted,

Name & address

Certificate of service.